

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST )  
POLICE OFFICER ANTHONY ABBATE, ) No. 08 PB 2676  
STAR No. 18601, DEPARTMENT OF POLICE, )  
CITY OF CHICAGO, )  
RESPONDENT ) (CR No.1003566)

FINDINGS AND DECISION

On March 20, 2008, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Anthony Abbate, Star No. 18601 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 15: Intoxication on or off duty.

The Police Board caused a hearing on these charges against Police Officer Anthony Abbate to be had before Michael G. Berland, Hearing Officer of the Police Board, on November 17, 2009.

Following the hearing, the members of the Police Board reviewed the written and video-recorded record in this case. Michael G. Berland, Hearing Officer, made an oral report to and conferred with the Police Board before it rendered its findings and decision.

#### **POLICE BOARD FINDINGS**

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. The charges were filed in writing and a Notice, stating the time, date, and place, when and where a hearing on the charges was to be held, together with a copy of the original charges, were served upon the Respondent more than five (5) days prior to the hearing on the charges.
3. The Respondent appeared throughout the hearing and was represented by legal counsel.
4. The Superintendent's motion to withdraw the charges that the Respondent violated Rule 1, Counts IV through VI, and Rule 2, Counts VII through IX, is granted.
5. The Agreed Motion to Exclude Audio and Motion to Substitute Superintendent's Exhibits Five and Six is granted.

6. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,  
in that:

Count I: The Superintendent did not prove by a preponderance of the evidence that on or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, intentionally or knowingly without legal justification, caused bodily harm to Michael Muellner, in violation of 720 ILCS 5/12-3(a)(1), and/or made physical contact of an insulting or provoking nature, in violation of 720 ILCS 5/12-3(a)(2).

The video-recordings of the incident at Jesse's Short Stop Inn during the afternoon of February 19, 2007, which are contained on Superintendent's Exhibit No. 5 and admitted into evidence, show one person throwing another person to the ground. However, no witness testified at the hearing that the person thrown to the ground is Michael Muellner. Both Muellner and Patricia Chiriboga exercised their Fifth Amendment right to remain silent to all substantive questions. The video-recordings of the incident are not sufficiently clear to establish that the person being thrown to the ground and physically maltreated by Anthony Abbate is in fact Muellner. Therefore, there is insufficient evidence in the record to find the Respondent guilty of this charge.

7. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count II: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, intentionally or knowingly without legal justification, caused bodily harm to James Passera, in violation of 720 ILCS 5/12-3(a)(1), and made physical contact of an insulting or provoking nature, in violation of 720 ILCS 5/12-3(a)(2).

Karolina Obrycka, who worked at Jesse's Shortstop Inn as a bartender during the evening of February 19, 2007, identified Anthony Abbate and James Passera on the video-recordings of events at Jesse's Short Stop Inn during the evening of February 19, 2007, which are contained on Superintendent's exhibit no. 6 and admitted into evidence. Obrycka testified that she observed Abbate hitting James Passera, whom she knew as a customer (transcript of the hearing, p. 61). The video-recordings corroborate Obrycka's testimony, in that they show Abbate intentionally striking Passera about the body repeatedly without justification and making contact of an insulting or provoking nature. It is clear from the video-recording that Abbate's blows caused bodily harm to James Passera.

8. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count III: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty,

intentionally or knowingly without legal justification, caused bodily harm to Karolina Obrycka, in violation of 720 ILCS 5/12-3(a)(1), and made physical contact of an insulting or provoking nature, in violation of 720 ILCS 5/12-3(a)(2), and in committing a battery, intentionally or knowingly caused great bodily harm to Karolina Obrycka, thereby committing aggravated battery, in violation of 720 ILCS 5/12-4(b)(8).

Karolina Obrycka testified that during the evening of February 19, 2007, she observed Anthony Abbate come behind the bar while carrying a bar stool. Obrycka testified that after she attempted to push Abbate out from behind the bar he threw her to the floor and began punching and kicking her, while she tried to protect herself by covering her face. She testified that Abbate was telling her that no one was going to tell him what to do. (Tr. pp. 65-67.) The video-recordings of the incident, which are contained on Superintendent's Exhibit No. 6 and admitted into evidence, show from two different perspectives Abbate throw Obrycka to the ground and repeatedly strike her about the body. The testimony of Obrycka, the video evidence, Abbate's felony conviction related to this incident, and the adverse inference taken by the Board against Abbate based on his refusal to answer questions by asserting his Fifth Amendment right at the hearing, are more than sufficient to find the Respondent guilty of this charge.

9. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count VII: The Superintendent did not prove by a preponderance of the evidence that on or about February 20, 2007, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending in any court, or before a Grand Jury, Administrative Agency, or any other State or local governmental unit, the Respondent communicated directly or indirectly, to a party or witness, a threat of injury or damage to property, in that the Respondent threatened Martin Kolodziej and/or Karolina Obrycka, directly or indirectly, to prevent Kolodziej and/or Obrycka from cooperating in a criminal and/or administrative investigation regarding the Respondent's actions on February 19, 2007, in violation of 720 ILCS 5/32-4(b).

Neither Karolina Obrycka nor Martin Kolodziej testified that Anthony Abbate threatened either of them. All other witnesses exercised their Fifth Amendment right to refuse to answer all substantive questions. Therefore, there is insufficient evidence in the record to find the Respondent guilty of this charge.

10. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count I: The Superintendent did not prove by a preponderance of the evidence that on or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, disrespected and/or physically maltreated Michael Muellner when he repeatedly directed profanities at Michael Muellner and/or threw Michael Muellner to the ground, thereby impeding the Department's efforts to achieve its

policy and goals and/or bringing discredit upon the Department.

As a result of the granting of the Agreed Motion to Exclude Audio and Motion to Substitute Superintendent's Exhibits Five and Six (see paragraph no. 5 above), there is no audio recording of the incidents at Jessie's Short Stop Inn on February 19, 2007, in evidence in this case. For this reason, and for the reasons set forth in paragraph no. 6 above, there is insufficient evidence in the record to find the Respondent guilty of this charge.

11. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, disrespected and physically maltreated James Passera when he repeatedly struck James Passera about the body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department

See the reasons for the finding set forth in paragraph no. 7 above.

12. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, threw Karolina Obrycka to the ground and repeatedly struck her about the body, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the reasons for the finding set forth in paragraph no. 8 above.

13. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count IV: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, was intoxicated, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Anthony Abbate admitted when he testified during the criminal court trial relating to the February 19, 2007, incidents that he was inebriated on February 19, 2007 (see Superintendent Exhibit No. 7). In addition, the video-recordings in evidence demonstrate Abbate's intoxication.



14. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count V: The Superintendent did not prove by a preponderance of the evidence that on or about February 19, 2007, to on or about the date the instant charges were filed with the Police Board, or on one or more dates therein, the Respondent conspired with Linda Burnickas and/or Gary Ortiz and/or Patricia Chiriboga to influence a criminal and/or administrative investigation, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

There was no admissible evidence introduced to establish a conspiracy to influence a criminal and/or administrative investigation. Linda Burnickas never testified. Gary Ortiz and Patricia Chiriboga exercised their Fifth Amendment right to refuse to answer all substantive questions. The Hearing Officer at the hearing asked the Superintendent's counsel for any case law to support their position that the adverse inferences resulting from witnesses taking the Fifth Amendment were sufficient to establish a civil conspiracy. The Superintendent's counsel, even when given time to search for such case law, stated that at that time they had no case law to support their position regarding the negative inferences. (Tr. pp. 70-76, 83-87.) Therefore, there is insufficient evidence in the record to find the Respondent guilty of this charge. In addition, the

Superintendent waived the right to further argue this issue before the Board.

15. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count VI: On or about April 27, 2007, in the vicinity of 2650 South California Avenue, Chicago, the Respondent was indicted on numerous counts of criminal charges, including felonies, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Superintendent's Exhibit No. 1, admitted into evidence, indicates that the Respondent was indicted on numerous criminal charges, including felonies.

16. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count X: The Superintendent did not prove by a preponderance of the evidence that on or about February 20, 2007, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending in any court, or before a Grand Jury, Administrative Agency, or any other State or local governmental unit, the Respondent communicated directly or

indirectly, to a party or witness, a threat of injury or damage to property, in that the Respondent threatened Martin Kolodziej and/or Karolina Obrycka, directly or indirectly, to preclude Kolodziej and/or Obrycka from cooperating in a criminal and/or administrative investigation regarding the Respondent's actions on February 19, 2007, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the reasons for the finding set forth in paragraph no. 9 above.

17. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count XI: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, engaged in actions and/or in an overall course of conduct which impedes the Department's efforts to achieve its policy and goals and/or brings discredit upon the Department.

The testimony of Karolina Obrycka, the video evidence, and Abbate's felony conviction related to his actions are more than sufficient to find the Respondent guilty of this charge.

18. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

Count I: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, disrespected and physically maltreated Karolina Obrycka when he threw her to the ground and repeatedly struck her about the body.

See the reasons for the finding set forth in paragraph no. 8 above.

19. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person,  
while on or off duty,

in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that on or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, disrespected and/or physically maltreated Michael Muellner when he repeatedly directed profanities at Michael Muellner and/or threw Michael Muellner to the ground.

See the reasons for the finding set forth in paragraph no. 10 above.

20. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person,  
while on or off duty,

in that:

Count III: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty,

disrespected and physically maltreated James Passera when he repeatedly struck James Passera about the body.

See the reasons for the finding set forth in paragraph no. 7 above.

21. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

Count I: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, threw Karolina Obrycka to the ground and repeatedly struck her about the body, thereby engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

See the reasons for the finding set forth in paragraph no. 8 above.

22. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **not guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that on or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, repeatedly directed profanities at Michael Muellner and/or threw Michael Muellner to the ground,

thereby engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

See the reasons for the finding set forth in paragraph no. 10 above.

23. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

Count III: On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, repeatedly struck James Passera about the body, thereby engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

See the reasons for the finding set forth in paragraph no. 7 above.

24. The Respondent, Police Officer Anthony Abbate, Star No. 18601, charged herein, is **guilty** of violating, to wit:

Rule 15: Intoxication on or off duty,

in that:

On or about February 19, 2007, while patronizing Jessie's Short Stop Inn, located at 5425 West Belmont Avenue, Chicago, the Respondent, while off duty, was intoxicated.

See the reasons for the finding set forth in paragraph no. 13 above.

25. The Police Board has considered the facts and circumstances of Anthony Abbate's conduct on February 19, 2007. The Police Board finds that the conduct of which the Board has found him guilty (which includes committing aggravated battery and battery) is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for his no longer occupying his office.

By reason of the findings of fact and guilt set forth herein, cause exists for the discharge of the Respondent, Police Officer Anthony Abbate, Star No. 18601, from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Michael G. Berland, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

**IT IS HEREBY ORDERED** that the Respondent, Police Officer Anthony Abbate, Star No. 18601, as a result of having been found **guilty** of charges in Police Board Case No. 08 PB 2676, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS  
10<sup>th</sup> DAY OF DECEMBER, 2009.

Patricia C. Bell  
Vivian M. Longo  
Sergeant C. [unclear]  
William J. [unclear]  
D. [unclear]  
L. [unclear]  
Miller  
[unclear]  
L. [unclear]

Attested by:

Max A. Caproni

Executive Director  
Police Board



Police Board Case No. 08 PB 2676  
Police Officer Anthony Abbate  
Page 16A

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Michael G. Berland, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

**IT IS HEREBY ORDERED** that the Respondent, Police Officer Anthony Abbate, Star No. 18601, as a result of having been found **guilty** of charges in Police Board Case No. 08 PB 2676, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS  
10<sup>th</sup> DAY OF DECEMBER, 2009.

*Patricia C. Bell*  
*Vito M. Longo*  
*Michael G. Berland*  
*William J. G. G.*  
*John J. Miller*  
*John J. Miller*  
*John J. Miller*

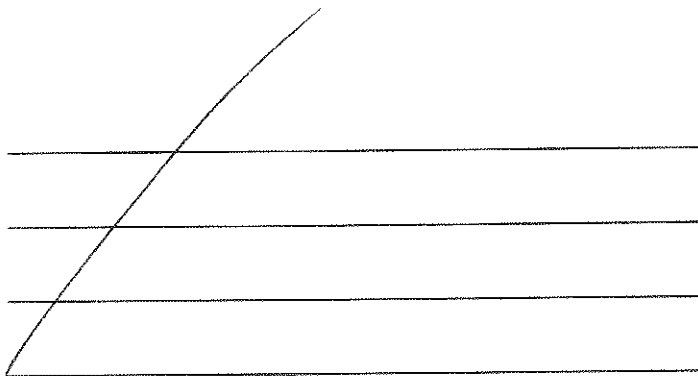
Attested by:

*Max A. Caproni*

Executive Director  
Police Board

DISSENT

The following members of the Police Board hereby dissent  
from the decision of the majority of the Board.



RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

\_\_\_\_\_  
SUPERINTENDENT OF POLICE